

**DOMESTIC RELATIONS CODE
ARTICLE 3**

CHILD CUSTODY

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DOMESTIC RELATIONS CODE

ARTICLE 3

CHILD CUSTODY

[NOTE: Except as otherwise noted, the provisions of Article 3 of the Domestic Relations Code were enacted on November 13, 1982 by Section 1 of Ordinance No. 82-1.]

CHAPTER 1. CHILD CUSTODY

Section 3-101. Jurisdiction Commencement of Proceedings.

(A) The Tribal Court is vested with jurisdiction to decide child custody matters by initial determination or by modification decree if:

(1) This Reservation is the domicile of the child at the time of commencement of the proceeding or had been the child's domicile within six (6) months before commencement of the proceeding and the child is absent from this Reservation because of his removal or retention by a person claiming his custody or for other reasons and the parent or person acting as parent continues to live in this Reservation; or

(2) It is in the best interest of the child that a court of this Reservation assume jurisdiction because the child and his parents or the child and at least one (1) contestant have significant connection with this Reservation, and there is available in this Reservation substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(3) The child is physically present in this Reservation and has been abandoned or it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(4) No other Indian Reservation or state has jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3) or another state or reservation has declined to exercise jurisdiction on the ground that this Reservation is the more appropriate forum to determine custody of the child and it is in his best interest that the court assume jurisdiction.

(B) Except under paragraphs (3) and (4) of subsection (A), physical presence in this Reservation of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this Reservation to make a child custody determination.

(C) Physical presence of the child, while desirable, is not a prerequisite for

jurisdiction to determine his custody.

(D) A child custody proceeding is commenced in the Tribal Court:

(1) By a parent, filing a petition:

(a) For dissolution or legal separation; or

(b) For custody of the child; or

(2) By a person other than a parent, by filing a petition for custody of the child, but only if he is not in the physical custody of one of his parents.

(E) Notice of a child custody proceeding shall be given to the child's parent, guardian, and custodian, who may appear, be heard, and file a responsive pleading. The court upon a showing of good cause, may permit intervention of other interested parties.

Section 3-102. Best Interest of Child; Modification of Decree; Fees.

(A) The court shall determine custody, either originally or upon petition for modification, in accordance with the best interests of the child. The court may consider all relevant factors, including:

(1) The wishes of the child's parent or parents as to his custody.

(2) The wishes of the child as to his custodian.

(3) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest.

(4) The child's adjustment to his home, school and community.

(5) The mental and physical health of all individuals involved.

(B) No motion to modify a custody decree may be made earlier than one (1) year after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral or emotional health.

(C) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

Section 3-103. Temporary Orders.

(A) A party to a custody proceeding may move for a temporary custody order. His motion must be supported by pleading as provided in Section 3-109. The court may award temporary custody under the standards of Section 3-102 after a hearing, or, if there is no objection, solely on the basis of the pleading.

(B) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstance of the parents in the best interest of the child require that a custody decree be issued.

(C) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order thereby is vacated.

Section 3-104. Interviews by Court; Professional Assistance.

(A) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation.

(B) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and shall be made available by the court to counsel, upon request, under such terms as the court determines. Counsel may examine as a witness any professional personnel consulted by the court, unless such right is waived.

Section 3-105. Investigations and Reports.

(A) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the court social service agency, the staff of the Juvenile Court, the local or a private agency employed by the court for the purpose.

(B) In preparing his report concerning a child, the investigator may consult any person who may have information about the child or his potential custodial arrangements.

(C) The court shall mail the investigator's report to counsel at least ten (10) days prior to the hearing. The investigator shall make available to counsel the names and addresses of all persons whom the investigator has consulted. Any party to the proceedings may call for examination the investigator and any person whom he has

consulted.

Section 3-106. Custody Hearings; Priority; Costs; Record.

(A) Custody proceedings shall receive priority in being set for hearing.

(B) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(C) The court, without a jury, shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(D) If the court finds that to protect the child's welfare, the record of any interview, report, investigations, or testimony in a custody proceeding should be kept secret, the court may then make an appropriate order sealing the record.

Section 3-107. Visitation Rights; Exception.

(A) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health.

(B) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child, but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral or emotional health.

Section 3-108. Judicial Supervision.

(A) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health, care and religious training, unless, upon motion by the noncustodial parent, the court, after hearing, finds that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(B) If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order a local social service

agency to exercise continuing supervision over the case to assure that the custodian or visitation terms of the decree are carried out.

Section 3-109. Affidavit; Contents.

A party seeking a temporary custody order or modification of a custody decree shall submit an affidavit or verified petition setting forth detailed facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, or verified petition to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the pleading, in which case it shall set a date for hearing on why the requested order of modification should not be granted.
